WP(C) 1759/2007
BEFORE
THE HON'BLE MR JUSTICE T.N.K. SINGH
JUDGMENT AND ORDER(ORAL)

1. By these writ petitions, the petitioners are challenging the impugned order No. PDA 95/2007/2 dated 29.3.2007 issued by the Joint Secretary to the Government of Assam, Panchayat & Rural Development Department and such being the situation, these writ petitions are being disposed of by this common judgment and order.

2. Heard Mr. A.M. Mazumdar, Mr. A.K. Goswami, Mr. N. Dutta, Mr. A.S. Choudhury learned senior counsels appearing for the petitioners as well as Mr. A.K. Phukan, learned Advocate General appearing for the State of Assam. Also heard Mr. M.U. Mamud, learned Standing Counsel, Assam State Election Commission.

It would be apt to reproduce the impugned order dated 29.3.2007.

GOVERNMENT OF ASSAM
PANCHAYAT 7 RURAL DEVELOPMENT DEPARTMENT:
DISPUR : GUWAHATI

NO.PDA.95/2007/2 dated Dispur, the 29th March, 2007.

N O T I C E

This is for information of all concerned that on completion of tenure of 5 (five) years with effect from the date of its first meeting, all Gaon Panchayats, Anchalik Panchayats and Zilla Parishads shall automatically stand dissolved. Upon such dissolution all properties of such Gaon Panchayats, Anchalik Panchayats and Zilla Parishads shall be vested in the Government till constitution of new bodies.

However such automatic dissolution shall not take effect where there are direction and order of the Court.

Sd/- A. Phukan, IAS
Joint Secretary to the Government of Assam,
Panchayat & Rural Dev. Department.

3. The learned counsels appearing for the petitioners as well as the respondents are of unanimous view that these writ petitions are to be considered and disposed of in the light of the Constitutional mandates under Article 243 E of the Constitution of India. Article 243 E of the Constitution of India reads as follows -

243 E. Duration of Panchayats, etc - (1) Every Panchayat, unless sooner dissolved under any law for the time being in force, shall continue for five years from the date appointed for its first meeting and no longer.

(2) No amendment of any law for the time being in force shall have the effect of causing dissolution of a Panchayat at any level, which is functioning immediately before such amendment, till the expiration of its duration specified in clause(1).

(3) An election to constitute a Panchayat shall be completed -

(a) before the expiry of its duration specified in clause (1) ;
(b) before the expiration of a period of six months from the date of its dissolution.

From bare perusal of the impugned order dated 29.3.2007 and also from the submissions of the learned counsel appearing for the State respondents it is crystal clear that the Government of Assam issued the impugned Order/ Notification for dissolution of the all Gaon Panchayats, Anchalik Panchayats and Zilla Parishads only on the ground that tenure of five years with effect from the date of its first meeting had expired.

4. Section 5 of the Assam Panchayat Act 1994 speaks about the establishment of Gaon Panchayat and Section 6 of the said Act clearly relates with the Constitution of the Gaon Panchayat. Section 7 of the said Act deals with the duration of the Gaon Panchayat. The duration of the Gaon Panchayat, save as otherwise provided in the Act, shall continue for a term of five years from the date appointed for its first meeting. The meaning of the terms first meeting are clear from clause(3) of Section 6 of the said Act that the first meeting of the Gaon Panchayat will be the meeting of the Gaon Panchayat for election of the Vice President amongst the members in the manner prescribed. Such being the situation the duration of the Gaon Panchayat will be five years from the date of first meeting of the Gaon Panchayat i.e. the meeting for election of Vice President from amongst the member in the manner prescribed.

5. Under Section 31 of the said Act, for each Development Block there shall be an Anchalik Panchayat having jurisdiction, save as otherwise provided in this Act, over the entire Development Block jurisdiction excluding such portion of the Block as are included in a Town Committee. Section 32 of the Assam Panchayat Act 1994 deals with the Constitution of Anchalik Panchayat. Under Section 35 of the said Act, every Anchalik Panchayat, save as otherwise provided in this Act, shall continue for a term of five years from the date appointed for its first meeting. The first meeting of the Anchalik Panchayat would be the meeting for election of President and Vice President of the Anchalik Panchayat respectively according to Section 37 of the Assam Panchayat Act 1994.

6. Under Section 64 of the Assam Panchayat Act, 1994, for every district there shall be Zilla Parishad having its jurisdiction, save as otherwise provided in this Act, over the entire district excluding such portions of the district as are included in a Municipality or a Municipal Corporation, as the case may be, or under the authority of Town Committee or Sanitary Board or Cantonment area or any notified area contrary to it under any law for the time being in force. Section 65 of the Act deals with the Constitution of Zilla Parishad and the term of the Zilla Parishad is mentioned in Section 68 of the said Act. Section 68 of the Assam Panchayat Act 1994 clearly mentions that every Zilla Parishad except as provided in the Act, shall continue for a period which shall not exceed five years from the date of holding the first meeting. The first meeting of the Zilla Parishad would be the meeting for election of the President and Vice President of the Zilla Parishad under Section 70, amongst the members directly elected under Section 65(1)(i) of the said Act.

7. Under Section 125 (i) of the Assam Panchayat Act 1994, the Gaon Panchayat, Anchalik Panchayat and Zilla Parishad may be dissolved if in the opinion of the Government the concerned Panchayat or Parishad exceeds or abuses its powers or is not competent to perform or make persistent default in the performance of the duties imposed on it under the Act or any other law for the time being in force, by an order of the Government published in the official Gazette. Under Section 125 (4)(a) all the powers and duties of the Gaon Panchayat or Anchalik Panchayat or Zilla Parishad shall during the period of its dissolution be exercised and performed by such person or persons as the Government may from time to time appoint in this behalf; Section 125 (4)(b) provides that all the property vested i

n the Gaon Panchayats or Anchalik Panchayats or Zilla Parishads shall, during th e period of dissolution vest in the Government.

8. In the present case it is the admitted fact that the dissolution of the Gaon Panchayats, Anchalik Panchayats and Zilla Parishads are not for the reasons mentioned in clause (1) of Section 125 of the Assam Gaon Panchayat Act 1994. In other words dissolution of the Gaon Panchayats, Anchalik Panchayats and Zilla P arishads, in the present writ petitions are not for the reasons mentioned in Cla use (1) of Section 125 but because of the lapses on the part of the State Govern ment as well as on the failure of the State Election Commission to perform their bounden duties to comply the mandates of the Constitution provided in Article 2 43 E of the Constitution of India where under an election to constitute a Pancha yat shall be completed before the expiry of its duration and before expiry of th e period of six (6) months from the date of his dissolution.

9. The State respondents i.e. respondent No.1, State of Assam, respondent N o.2, Commissioner and Secretary to the Government of Assam, Panchayat and Rural Development Department, Dispur and respondent No.3, the Joint Secretary to the G overnment of Assam, Panchayat & Rural Development Department, Dispur filed their joint affidavit-in-opposition stating that on completion of the duration of fiv e years of all the Gaon Panchayats, Anchalik Panchayats and Zilla Parishads from the date of the first meeting, all the Gaon Panchayats, Anchalik Panchayats and the Zilla Parishads were dissolved vide impugned notice/order dated 29.4.2007 a s per the provisions of the Assam Panchayat Act 1994 and also as per the Constit utional mandate. It is also further stated in their affidavit that the decision taken by the Government for dissolution of the Gaon Panchayats, Anchalik Panchay at and Zilla Parishad was not with a view to appoint any ad-hoc bodies for manag ement of the Gaon Panchayats, Anchalik Panchayats and Zilla Parishads. The State Government-respondents also state in their affidavit that the State Government had already completed the process for delimitation of Gaon Panchayats, Anchalik Panchayats and Zilla Parishads Constituencies for holding election by the State Election Commission and necessary funds are being provided to the State Election Commission as per the proposal submitted by the State Election Commission. As p er the provision of Article 243-K of the Constitution of India, the State Electi on Commission is to function independently of the State concerned in the manner of superintendence, direction and control of the election and preparation of ele ctoral rolls and for the conduct of all election to the local bodies (Panchayat and Municipality local body). From the affidavit-in-opposition of the State resp ondents, it appears that the State respondents are alleging that the State Elect ion Commissioner is responsible for failure to hold the election of the Panchaya t and the Zilla Parishad in compliance of the mandate of the Constitution mentio ned in clause (3) of the Article 243 E of the Constitution of India.

10. The State Election Commission by filing affidavit-in-opposition gives th e reasons for the failure to comply the mandate of the Constitution under clause (3) of Article 243 E of the Constitution of India, which are contradictory to t he case of the State-respondents in their joint affidavit. The State Election Co mmission in affidavit-in-opposition state that the failure of performance of the ir constitutional duties for holding Panchayat election as per the Constitutiona l mandate within the period of five years were because of the failure of the Sta te Government to fix tentative date proposed for holding Panchayat Election in t he State of Assam. The State Election Commission also state in the affidavit tha t the Assam State Election Commission was established in the year 1994 and since then it has been running under the Directorate of Panchayat and Rural Developme nt particularly in financial matters. The other reasons for the failures on the part of the State Election Commission to perform its duties as per the Constitut ional mandates to hold the election of the Panchayat is because of the failure o n the part of the State respondents to release the funds for holding the electio n.

11. Under Section 114 of the Assam Panchayat Act 1994, the superintendence, direction and control of the preparation of electoral roll and the conduct of all elections to the Panchayats shall be vested in a State Election Commission consisting of State Election Commissioner to be appointed by the Governor. The Government shall when so requested by the State Election Commission, make available to the State Election Commission such staff as may be necessary for the discharge of the functions conferred on the State Election Commission under the Act. It is the admitted fact that the Governor of Assam has appointed the State Election Commission. From the conjoint reading of Article 243 K of the Constitution of India and Section 114 of the Assam Panchayat Act, 1994 it is crystal clear that it is the State Election Commission who shall conduct election to the Panchayat and Zilla Parishads and also it is the bounden duty of the State Government to make available to the State Election Commission such staff as may be necessary for the discharge of the function conferred on the State Election Commission and also available the funds for holding the election.

12. The Apex Court in Kishansing Tomar Vs. Municipal Corporation of the City of Ahmedabad and Others reported in (2006) 8 SCC 352 (C.B.) had analyzed Article 243-U of the Constitution of India which is pari-materia with the Article 243 E of the Constitution of India. The Apex Court in Kishansing Tomar(Supra) held that it is incumbent upon the State Election Commission and other authorities to carry out mandate of the Constitution and also to see that a new Municipality is constituted in time and the elections to a Municipality are conducted before the expiry of its duration of five years as mandatory specified in Article 243 U(1) of the Constitution of India. The State Election Commission shall not put forward any excuse base on unreasonable ground that the election could not be completed in time.

Para Nos.13,14,19,20 and 21 of SCC in Kishansing Tomar(Supra) are quoted hereunder -

13. The effect of Article 243-U of the Constitution is to be appreciated in the above background. Under this article, the duration of the municipality is fixed for a term of five years and it is stated that every municipality shall continue for five years from the date appointed for its first meeting and no longer. Clause (3) of Article 243-U states that election to constitute a municipality shall be completed - (a) before the expiry of its duration specified in clause (1), or (b) before the expiration of a period of six months from the date of its dissolution. Therefore, the constitutional mandate is that election to a municipality shall be completed before the expiry of the five years' period stipulated in clause (1) of Article 243-U and in case of dissolution, the new body shall be constituted before the expiration of a period of six months and elections have to be conducted in such a manner. A proviso is added to sub-clause(3) of Article 243-U that in case of dissolution, the remainder of the period for which the dissolved municipality would have continued is less than six months, it shall not be necessary to hold any election under this clause for constituting the municipality for such period. It is also specified in clause (4) of Article 243-U that a municipality constituted upon the dissolution of a municipality before the expiration of its duration shall continue only for the remainder of the period for which the dissolved municipality would have continued under clause (1) had it not been so dissolved.

14. So, in any case, the duration of the municipality is fixed as five years from the date of its first meeting and no longer. It is incumbent upon the Election Commission and other authorities to carry out the mandate of the Constitution and to see that a new municipality is constituted in time and elections to the municipality are conducted before the expiry of its duration of five years as specified in clause (1) of Article 243-U.

19. From the opinion thus expressed by this Court, it is clear that the State El

ection Commission shall not put forward any excuse based on unreasonable grounds that the election could not be completed in time. The Election Commission shall try to complete the election before the expiration of the duration of five years' period as stipulated in clause (5). Any revision of electoral rolls shall be carried out in time and if it cannot be carried out within a reasonable time, the election has to be conducted on the basis of the then existing electoral rolls. In other words, the Election Commission shall complete the election before the expiration of the duration of five years' period as stipulated in clause (5) and not yield to situations that may be created by vested interests to postpone elections from being held within the stipulated time.

20. The majority opinion in Lakshmi Charan Sen Vs. A.K.M. Hassan Uzzaman held that the fact that certain claims and objections are not finally disposed of while preparing the electoral rolls or even assuming that they are not filed in accordance with law cannot arrest the process of election to the legislature. The election has to be held on the basis of the electoral rolls, which are in force on the last date for making nomination. It is true that the Election Commission shall take steps to prepare the electoral rolls by following due process of law, but that too, should be done timely and in no circumstances, it shall be delay so as to cause gross violation of the mandatory provisions contained in Article 243-U of the Constitution.

21. It is true that there may be certain man-made calamities, such as rioting or breakdown of law and order, or natural calamities which could distract the authorities from holding elections to the municipality, but they are exceptional circumstances and under no (sic other) circumstances would the Election Commission be justified in delaying the process of election after consulting the State Government and other authorities. But that should be an exceptional circumstance and shall not be a regular feature to extend the duration of the municipality. Going by the provisions contained in Article 243-U, it is clear that the period of five years fixed there under to constitute the municipality is mandatory in nature and has to be followed in all respects. It is only when the municipality is dissolved for any other reason and the remainder of the period for which the dissolved municipality would have continued is less than six months, it shall not be necessary to hold any elections for constituting the municipality for such period.

13. Mr. A.K. Phukan, learned Advocate General appearing for the State Government as well as Mr. N. Medhi and Mr. M.U. Mahmud, learned counsel appearing for the State Election Commission submit that the constitutional authorities like the State Election Commission and also the State Government are duty bound to carry out the mandate of the Constitution under Article 243 E of the Constitution of India to hold election to constitute Gaon Panchayat, Anchalik Panchayat and Zilla Parishad before the expiry of the duration; and therefore, they are admitting the failure of the State Government and State Election Commission to fulfill the mandate of the Constitution to hold the election for Constitution of Gaon Panchayats, Anchalik Panchayats and Zilla Parishads before the expiry of the term. But the core question in the present cases is that who would be the appropriate authority to function the Gaon Panchayat, Anchalik Panchayat and Zilla Parishad in the interregnum i.e. the period from the date of dissolution of the Panchayats and the Zilla Parishads to the date of the constitution of new Gaon Panchayats and Zilla Parishads after completion of the election in compliance with the mandate of the Constitution of India. In the present case, admittedly all the Gaon Panchayats, Anchalik Panchayats and Zilla Parishads are not dissolved for the fault of the concerned Panchayat and the Zilla Parishad under Section 125(i) of the Assam Panchayat Act 1994 but the dissolution was because of the failure on the part of the State Government and the State Election Commission to perform their duties to fulfill the mandate of the Constitution of India to hold election to constitute the Gaon Panchayat, Anchalik Panchayat and Zilla Parishad before the expiry of duration i.e. within five years from the date of their first meeting.

Therefore, the State Government by taking the advantage of their own wrong cannot take over the functioning of all the Gaon Panchayats, Anchalik Panchayats and Zilla Parishads through their employees till the Constitution of the new Gaon Panchayats, Anchalik Panchayats and Zilla Parishads after the completion of the election. It is well settled principle of law that no one can take the advantage of his own wrong. Reference to be made to the decision of the Kerala High Court (Full Bench) in Kanakku Kumara Pillai Thanu Pillai Vs. Mathevan Mathevan of Aravamkadu Karakkattu Madathu Veedu and another reported in AIR 1963 Kerala 179 (Para 7) and the decision of Amrik Singh and others Vs. Union of India and Others reported in AIR 1980 SC 1447 wherein the Apex Court held that if there was any administrative lapses the concerned employee could not be victimized.

14. From the above discussion and also in the peculiar facts and circumstances of writ petitions wherein the State-respondents and the State Election Commission have admitted their failure to perform their duties to carry out the mandate of the Constitution of India discussed above, these writ petitions are disposed of with the following directions -

(a) The State Election Commission as contemplated under Article 243 K of the Constitution of India and the Section 114 of the Assam Panchayat Act,1994 is to function independently of the State Government in the matter of their power of superintendence, direction and control and conduct of all the election to all the Gaon Panchayats, Anchalik Panchayats and Zilla Parishads.

(b) The State Election Commission has to fix the date for holding election to all the Gaon Panchayats, Anchalik Panchayats and Zilla Parishads.

(c) The State respondents are to fulfill the requirements of the State Election Commission as may be necessary for the discharge of the functions of the State Election Commission for holding election to all Gaon Panchayats, Anchalik Panchayats and Zilla Parishads.

(d) The Gaon Panchayat, Anchalik Panchayat and Zilla Parishad whose terms had expired because of the failure on the part of the State respondents and the State Election Commission to fulfill the mandates of the Constitution to hold the election before the expiry of their term shall be allowed to function till the constitution of the new Gaon Panchayats, Anchalik Panchayats and Zilla Parishads after completion of the election but they are not allowed to take any major policy decision, make any expenditure from the funds other than the payment of salaries of the staffs and routine function of the office without the permission of this Court.

(e) All the elections to the Gaon Panchayats, Anchalik Panchayats and Zilla Parishads shall be completed on or before 31.10.2007.

For compliance with the above directions, this Court is of the considered view that the impugned notice dated 29.3.2007 is necessary to be set aside. Accordingly, the impugned notification is quashed and set aside. Parties are to bear their own cost.